

# FATCA FACTS

## Limiting Risk and Protecting Payments

Financial institutions around the world risk government enforcement action and 30 percent withholding on select US-sourced payments if their due diligence and reporting procedures fail to comply with the Foreign Account Tax Compliant Act (FATCA).

FATCA, which the United States enacted in 2010, aims to identify US taxpayers with potentially unreported accounts and assets abroad. Subject to narrow exemptions, FATCA requires financial institutions (FFIs) around the world to conduct due diligence to identify accounts maintained for the benefit of US persons, or by entities in which a US person has a substantial interest (US-Related Accounts). Further, FFIs must report information about these accounts to the US or their local tax authorities on an annual basis. FFIs should anticipate that governments around the world will mine the information reported under FATCA to further investigations aimed at identifying noncompliance by financial institutions and their clients.

Since FATCA was implemented on July 1, 2014, the US Internal Revenue Service (IRS) and local partner jurisdictions have begun enforcement. Hence, participating FFIs must evaluate their exposure and implement new due diligence and reporting procedures for certain pre-existing accounts and all accounts on-boarded after July 1, 2014. Absent an exemption, an FFI that fails to comply with FATCA will face difficulties conducting business with participating FFIs, as the non-compliant FFI may be subject to 30 percent withholding on select US-sourced payments.

More than 100 global jurisdictions have already effectively entered into Intergovernmental Agreements (IGAs) with the US to implement FATCA. The most common Model 1 IGA requires a participating FFI, in compliance with local banking and privacy laws, to report information to its local government, which in turn shares the information with the US (with an option for the US to automatically provide reciprocal information to the partner jurisdiction).

Given the complexities and potential business sensitivities, FFIs need effective and insightful advice to maintain compliance without alienating customers.

Latham's FATCA team helps FFIs with:

- Entity classification, registration and general compliance advice
- Design and evaluation of FATCA due diligence programs
- Internal investigations, risk assessments, sensitive tax enforcement matters
- Responses to government requests pursuant to tax treaties and Tax Information Exchange Agreements (TIEAs)
- Representation before US and worldwide tax authorities
- Civil and criminal tax investigations and litigation

Band **1**

**Top Ranked US Tax Controversy Firm**

*Chambers USA 2014*

The team “provides stellar transactional advice to an enviable client roster, including leading international corporations, financial institutions, private equity firms and investment managers. Also has significant capabilities in tax controversy advice.”

*Chambers Global 2014*

Latham's European tax team is a “prominent player on many of the market's most complicated and challenging cross-border deals. Particularly active on private equity and senior financings, and houses noteworthy teams in the UK, France, Germany and Spain.”

*Chambers Europe 2014*

# FATCA FACTS

## Limiting Risk and Protecting Payments continued

### LATHAM'S FATCA TEAM

Latham advises global financial institutions, corporate service providers and trust companies on their most complex and sensitive FATCA related issues.

- Our Team.** Consistently recognized as market leaders, Latham's experienced and energetic legal professionals across our global offices bring complementary skills in tax, banking and government investigations to provide clients a fully integrated approach to developing an effective FATCA compliance strategy.
- Our Experience.** Latham's team draws on experience advising an impressive roster of financial industry clients across borders on complex FATCA related corporate and governmental matters. As published thought leaders on FATCA, international tax and global enforcement, we understand the need for confidential advice, investigations and dispute resolution services to implement a comprehensive FATCA compliance strategy.
- Our Service.** Latham's cross-jurisdictional team can navigate FATCA's complexities to help clients minimize risk and achieve full compliance. Our FATCA related legal advice is generally protected from compelled disclosure under the attorney-client privilege, so our services are efficient and confidential. As necessary, we also coordinate our clients' engagement with outside accounting firms, local counsel, technologists (IT) or compliance consultants to cost-efficiently manage FATCA compliance programs.

Our FATCA team provides specialized advice on US and international taxation, financial products and investment vehicles, international banking regulations, and government enforcement and investigations. Together, the team brings an informed perspective on the reach of US tax enforcement abroad and an ability to predict and manage compliance and enforcement contacts with US tax authorities. Latham assists multinational corporations, financial institutions, private equity funds, Fortune 500 corporations and emerging companies around the globe on FATCA and global tax compliance and enforcement issues.

For further information, please contact:

**Miriam Fisher, Washington, D.C.**  
Global Co-chair of Tax Controversy Practice

T +1.202.637.2178  
E miriam.fisher@lw.com

**Brian McManus, Washington, D.C.**  
Tax Controversy Partner

T +1.202.637.2173  
E brian.mcmanus@lw.com

**Karl Mah, London**  
Tax Partner

T +44.20.7710.1179  
E karl.mah@lw.com

**Jiyeon Lee-Lim, New York**  
Tax Partner

T +1.212.906.1298  
E jiyeon.lee-lim@lw.com

**William Lu, New York**  
Tax Partner

T +1.212.906.1823  
E william.lu@lw.com

**Raymond Holst, New York**  
Tax Counsel, Former Global Chairman of Morgan Stanley's FATCA committee

T +1.212.906.1221  
E raymond.holst@lw.com